

**PLANNING COMMISSION
MINUTES**

The Winchester Planning Commission held its regular meeting on Tuesday, December 16, 2008, at 3:00 p.m. in the Council Chambers, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia.

PRESENT: Planning Commissioners: Chairman Masters and Commissioners Weber, Adams, Talley, Willingham and Shore.

Ex Officio & Staff: Griffin, Youmans, Moore, Diem, & Walsh

ABSENT: Commissioner Sublett

VISITORS: Richie Pifer, Mandy Van Fossen, Lawton Saunders, Ben Montgomery, Richard Hoffman, Don Crigler, Jim Stutzman, Milt McInturff

CALL TO ORDER: Chairman Masters called the meeting to order at 3:00pm.

APPROVAL OF MINUTES:

Mr. Weber, seconded by Mr. Talley, moved to approve the minutes as presented. Motion passed 6-0.

CORRESPONDENCE

A Revised Agenda was presented that added:
Item 3A – Stutzman Body Shop Site Plan Revision
Item 3B – Motion to Initiate TA-08-15

CITIZEN COMMENTS

None

REPORT OF FREDERICK COUNTY LIAISON

None

PUBLIC HEARINGS

CU-08-15 Request of Mandy Van Fossen for a conditional use permit for a gymnastic studio at 1810 Roberts St (*Section 251, Double Circle 1, Lot 25*) zoned Limited Industrial, M-1 District.

Mr. Moore presented the request for a conditional use permit to convert 5,000sf of space currently in warehouse use in the northwest portion of the building to a gymnastic studio.

A floor plan submitted with the application shows the proposed layout of recreational space within the 5,000 sf area. The subject portion of the site is accessed from Bellview Ave utilizing Roberts St. This western portion of the site is occupied as office space and some vacant/storage

spaces. The warehousing operation is conducted on the eastern portion of the site and is accessed from Bellview Ave utilizing a separate entrance off of Henry Ave. The off-street parking area on the north side of the building is segregated completely from the eastern portion of the site. One single family residence on the eastern side of Roberts St is located directly adjacent to the proposed use. The subject space has an overhead door along the north wall, directly opposite the parking lot from the residence. Staff recommends a condition that the overhead door remain closed during operation so as to limit any potential noise and light impacts from the interior use. Sufficient illumination of the off-street parking area is already provided.

Chairman Masters opened the public hearing

Richie Pifer, 601 Merrimans Lane, owner of this property stated that truck traffic comes in from Henry Ave. It is almost impossible for trucks to come in on Roberts St due to them having to make the turn. The tenant that receives the majority of the deliveries is leaving and being replaced with a tenant that would only receive approximately two (2) deliveries a week. He felt that the decline in volume would elevate any concerns of this use. He stated that there was already screening of the overhead door installed when the space was previously converted to a paint store. He added that early next year he will be consolidating the property that he owns to the west of this one. He concluded by saying that Ms. Van Fossen will be working with school age children, so he felt 3 pm would be a more reasonable start time.

Mandy Vanfossen stated that she would now also like to offer her service from 9am to 11am for stay at home moms looking for activities for their children because there are not any other activities in the area during that time.

Chairman Masters closed the public hearing.

Mr. Shore asked Mr. Pifer if the existing extension of Roberts Street will still be a roadway after the consolidation.

Mr. Pifer explained the commercial project will tie on the end of Roberts Street. He will try to design it so that Roberts Street is not the main entrance but it will allow access.

Mr. Adams stated that it looks like the restriction on hours is to take advantage of the time-shared parking. He asked if there were no beginning restriction time, how many spaces would be needed.

Mr. Moore explained that it would require 109 spaces. He suggested the condition pertaining to the start time could be amended to state that the restriction could be lifted if additional off-street parking were provided. There is no way around the limitation on start time without the provision of additional parking unless they go to the BZA (Board of Zoning Appeals) for relief.

Mr. Adams asked that assuming that the trucks are gone, how many spaces that would free up.

Mr. Moore stated that it would not free up any because that use is allocated to warehouse use which requires the least amount of spaces. However, without the trucking operation on site, there would be excess paved area that could be striped to provide the additional parking.

Chairman Masters stated that she had a problem with expanding the hours because in the applicant's letter of request, these are the hours she wanted. She felt that the ruling should be on what was requested because this is the first time she was hearing of this desire to operate earlier. There was no mention of it during the work session, and staff was not notified prior to the meeting.

Mr. Willingham asked if there was any way around the parking, being that it is the only thing that is limiting the hours.

Mr. Moore stated that she would need to request a variance from the BZA for parking. He explained that it has nothing to do with the surrounding uses; it is that time-shared parking requires those time restrictions.

Mr. Willingham asked if 3pm would be acceptable.

Mr. Moore said no, that she would have to go to the BZA for the variance in order to open any earlier.

Mr. Willingham stated that she wants to open a business in the city and he is hoping there is a way to be accommodating.

Mr. Moore explained that the time shared parking regulations was recently amended to make it more favorable. Absent of an amendment to the Ordinance or the BZA variance, there is no way around it.

Mr. Adams, seconded by Mr. Weber, moved to forward CU-08-15 to Council recommending approval subject to the following conditions:

1. The hours of operation shall be no earlier than 4pm on weekdays and no later than 9pm on any night. Once additional parking becomes available the 4pm restriction will be removed; and,
2. The overhead door on the north side of the building shall remain closed during hours of operation.

Approval is recommended because the use, as conditioned, should not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood.

Mr. Willingham stated that he will be opposing the motion, not because he is opposed to the use, but because he is opposed to the conditions.

Mr. Adams stated that it would be appropriate for someone who supports the use to support the motion, rather than oppose it.

Mr. Talley stated that he still has some concerns about the lack of clarity from the applicant in the hours of operation that she is planning.

Motion passed 4-2, with Mr. Willingham and Mr. Talley voting in the negative.

CU-08-16 Request of South Braddock Street Renovations, LLC for a conditional use permit for extended stay lodging at 116-118 S. Braddock St (*Section 193, Double Circle 1, Block E, Lot 3*) zoned Central Business, B-1 District with Historic Winchester, HW overlay.

Mr. Youmans presented the request for a 6-unit extended stay lodging facility in a new 3-story structure to be built at the rear of a property fronting along the east side of S. Braddock St and backing up to Indian Alley. Each of the 6 units would have one bedroom and kitchen facilities. The applicant is providing 8 parking spaces even though the extended stay and office uses are exempt from parking requirements. The BAR has already approved changes to the structures on this site. Elevations of the proposed structure have been provided and will be subject to BAR approval. Floor plans are also provided.

By proposing these units as Extended Stay (commercial lodging) instead of multifamily (residences), the applicant does not need to provide as much green area and can get more units on the site. The occupancies will be taxed as lodging under this approach. Motels, Hotels and B&B's are otherwise a use allowed by right in the B-1 district.

Chairman Masters opened the public hearing.

Lawton Saunders stated that this project is something that will blend with downtown. He explained that there is a need for temporary housing in this area, such as for traveling nurses with temporary assignments at the hospital. This will be similar to the one that currently exists on Cameron Street. There were questions about having no windows on the parking lot side and that is because there is a zero lot line restriction that does not allow windows under the building code. He thanked the Commission for their time.

Chairman Masters closed the public hearing.

Mr. Shore approved of the project. He stated that it will be aesthetically pleasing.

Mr. Adams stated that he was familiar with the applicant's other building on Cameron St and felt that it was done well.

Mr. Shore, seconded by Mr. Weber, moved to forward the request for 6 extended stay units in a new structure to Council recommending approval because the proposal, as submitted, will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The approval is subject to:

1. Strict compliance with payment of lodging tax to the City; and,
2. Staff review and approval of the related site plan.

Motion passed 6-0.

CU-08-17 Request of Montgomery Engineering Group, Inc for a conditional use permit for an automobile service establishment at 24-36 W. Hart St (*Section 212, Double Circle 1, Block M, Lot 2*) zoned Central Business, B-1 District.

Mr. Moore presented the request for a conditional use permit to convert 1,800sf of currently vacant space in the existing building to a single-bay, auto service establishment.

An automobile service establishment may be considered as a conditional use within the B-1 District provided that all service and repair shall be within a building enclosed on all sides. The existing auto service establishment in the same building is a nonconforming use. Staff finds no record of known complaints regarding this existing auto service use.

In a letter dated November 10, 2008, the applicant correctly states that the existing parking area is adequate for the use. Sufficient illumination of the off-street parking area is already provided. There are two dumpsters that have been placed in the off-street parking area without proper screening. Staff suggests that, if these are to remain, proper placement and screening should be provided in conjunction with this site plan. Staff would also recommend a condition that inoperable motor vehicles not be permitted to be stored outside unless a revised site plan showing provision of required screening per the Ordinance is approved and implemented.

There are three existing overhead bay doors facing toward W. Hart St. at the west end of the building. However, the subject tenant space, as well as the space housing the existing auto service establishment, has its only bay access to the rear of the building through the off-street parking area. As the use may only be considered within a building enclosed on all sides, a condition that the overhead door is to remain closed during service and repair would be appropriate. It may also be appropriate to consider conditions upon the hours of operation to mitigate any potential impact on neighboring properties, particularly the residential uses to the north.

Chairman Masters opened the public hearing.

Ben Montgomery stated that because of the requirement that the use take place in an enclosed space, they are not in favor of further limiting the hours of operation in addition to Winchester's established quiet hours.. He felt it would be too limiting on a small business owner.

Richard Hoffman of 1309 Vancerright St owns properties across the street and to the west. He was concerned with outside parking and inoperable vehicles. He asked if that could be explained in a little more detail.

Chairman Masters closed the public hearing.

Chairman Masters asked Mr. Moore to respond to Mr. Hoffman's questions. Mr. Moore explained that the Ordinance already speaks to inoperable vehicles, which cannot be stored unless they are properly screened. The suggested condition would be redundant to what is already prescribed in the Ordinance, but it may be appropriate to include so that these requirements are clear to the applicant.

Chairman Masters added that an unlicensed or unregistered car also qualifies as an inoperable vehicle.

Mr. Willingham asked how it is defined.

Mr. Diem explained the definition saying that basically any motor vehicle, trailer or semi-trailer which is not in operating condition, or is partially or totally disassembled for 60 days or longer, or which does not display current license plates or registration is considered inoperable.

Mr. Adams questioned the hours of operation He felt that the best evidence of the fact that it does not affect health, safety or welfare is that no complaints have been filed, given the current use. He suggest the hours of operation to be 7am to 6pm.

Chairman Masters agreed with Mr. Adams that it is important to protect the people who are in that area.

Mr. Weber stated that he is struggling with hours. He stated that he is more inclined to support 7pm for closing rather than 6pm. He felt that even with the doors closed that there would still be some noise. He asked if the buildings are soundproof.

Mr. Montgomery stated that each individual bay is made of concrete block which is fairly sound proof, plus the doors are insulated.

Mr. Willingham agreed with what was said, however he does not want to limit their ability to do business until they have had a complaint.

Chairman Masters stated that she was big on business, but she was also concerned with maintaining the quiet and respect of the people that live there.

Mr. Adams felt that putting the restrictions in will promote the business and protect the neighbors at the same time.

Mr. Weber, seconded by Mr. Adams, moved to forward CU-08-17 to Council recommending approval subject to the following conditions:

1. All service and repair of vehicles is to occur inside the building;
2. The overhead door is to remain closed during all service and repair of vehicles;
3. Hours of operation shall be no earlier than 7am and no later than 7pm.
4. No inoperable vehicles shall be stored outside unless a revised site plan showing provision of required screening per the Ordinance is approved and implemented; and,
5. Staff review and approval of the related site plan.

Approval is recommended because the use, as conditioned, should not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood.

Motion passed 6-0.

CU-08-18 Request of DFC Architects, PC for a conditional use permit for a two-family dwelling at 319-321 S. Kent St (*Section 193, Double Circle 1, Block R, Lot 19*) zoned Limited High Density Residential, HR-1 District with Historic Winchester, HW District overlay.

Mr. Youmans presented the request for a new two-story, two-family dwelling with one unit on the first floor and one unit on the second floor. The new structure replaces an existing mixed use building that had residential use on the upper level and the corner grocery store on the ground level.

The BAR has approved the demolition of the structurally unsound existing mixed use structure. A home that was just to the west along the north side of E. Cecil St has already been removed. The new structure is consistent with the scale of structures along the subject frontage of S. Kent St. A site plan submitted with the CUP application depicts a structure that measures 42 feet long along S. Kent St and 33 feet deep along E. Cecil St.

The attached site plan depicts two off-street parking spaces. The applicant received a variance of half of the parking requirement from the BZA. The applicant also received BZA relief of minimum lot area, minimum lot width, main building setback, side yard setback, corner side yard setback, and yard requirements.

Even with the extensive variances, the proposed structure is more conforming to the HR-1 district standards than the existing structure in many respects. The existing structure housed more than one dwelling unit in it in addition to the ground-floor commercial use. Submitted elevations and floor plans dated Sept 17, 2008 depict a 2-bedroom dwelling unit on the first floor and a 3-bedroom unit on the second floor. Access to the second floor unit is via a separate building entrance on the E. Cecil St side of the structure. Access to the ground floor unit is via a door fronting on the S. Kent St front and a rear entrance leading to the parking at the rear of the building. A fenced courtyard is also shown.

Chairman Masters opened the public hearing.

Don Crigler of DFC Architects, 116 S. Stewart St, explained that the building is designed to mimic the existing building. It will be set back a little further from the street, eliminating the current encroachment of the porch into the right of way, but will still be in keeping with the neighborhood. He stated that he would be available for questions.

Chairman Masters closed the public hearing.

Mr. Talley stated that based on the elevations that the building appears to have an attic space. He asked if it would be utilized.

Mr. Crigler explained that there would not be any regular access to it.

Mr. Weber asked why there was no access to courtyard area from the second story.

Mr. Crigler explained that the first floor will be occupied by Ms. Jackson and she will be the only one with access to it.

Mr. Talley , seconded by Mr. Weber, moved to forward the request for the two-family dwelling in a new structure to Council recommending approval because the proposal, as submitted, will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The approval is subject to staff review and approval of the related site plan.

Motion passed 6-0.

TA-08-10 AN ORDINANCE AMENDING AND RE-ENACTING ARTICLE 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO CONDITIONAL USE PERMITS

Mr. Diem presented the amendment request brought forth by the Zoning and Inspections Administrator, in an effort to further clarify the process by which a Conditional Use Permit shall expire.

The provisions outlining the terms of expiration of a CUP are currently identified in Section 18-2-3.8. These provisions are believed to present insufficient clarity regarding enforcement, appellate process, or determination by the Administrator. This lack of clarification became evident during a recent enforcement action involving a use that had been granted a CUP; but, had failed to meet the imposed conditions proposed by the Planning Commission and enacted by the City Council.

Initially, the appellant sought relief through the Board of Zoning Appeals process; however, it was discovered through further legal review by the City Attorney that the Board of Zoning Appeals does not have purview over granting or revoking a CUP. Instead, that authority is expressly provided to the local governing body *or* City Council, as stated in § 15.2-2286, Code of Virginia, et seq.

As a result, the matter had to be withdrawn from the BZA agenda and scheduled for a public hearing before the City Council. The process further extended the time period involved in reaching a decision or conclusion. During the waiting period, and based on the existing Ordinance provisions, the appellant was advised to discontinue the use that had been granted a CUP. A considerable financial loss was reportedly experienced by the appellant.

This text amendment provides a clear process for identifying the circumstances that could potentially nullify the CUP, notifying City Council of those circumstances, and scheduling a public hearing to review the information obtained. It further allows for the CUP to be amended, as opposed to strict revocation for failure to meet the imposed conditions.

Chairman Masters opened the public hearing. Hearing no one, she closed the public hearing.

Mr. Weber, seconded by Mr. Adams, moved that the Commission forward TA-08-10 to City Council recommending approval as contained in Draft 2 dated 11/07/08 because it represents good planning practice and allows for a more effective and efficient process when dealing with circumstances that could lead to the revocation of a CUP.

Motion passed 6-0.

TA-08-13 AN ORDINANCE AMENDING AND RE-ENACTING ARTICLES 8 AND 19 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO PROVISIONS FOR UPPER-STORY HOUSING IN THE HIGHWAY COMMERCIAL, B-2 DISTRICT.

Mr. Youmans presented the request to ease the restrictions on mixed use development in the B-2 District by eliminating the age restriction on multifamily occupancy and introducing additional commercial uses that can be allowed on the ground floor. In conjunction with opening the use up to general population (vs. age-restricted population) the ordinance stipulates a maximum of two bedrooms per unit and establishes minimum dwelling unit floor areas consistent with those in the

B-1 district. Language pertaining to the location of off-street parking is also modified with the request to fulfill the intent of New Urbanism.

The ordinance modifies language adopted by Council in 2005 for mixed use projects in the B-2 District. The Corners project at the intersection of Valor Dr and Taft Ave is the only one that has made use of that provision to date. Staff fully endorses efforts to promote mixed use development in the City, particularly on the upper level of buildings in the highway commercial districts. The changes should make mixed use development more attractive to developers. Retaining the CUP approval process allows the Planning Commission and City Council to scrutinize the design of these projects thereby ensuring quality and protecting any adjacent property owner concerns.

The green area requirement (35% of the gross acreage) would be retained as the minimum green area standard even though there could be families residing in the upper level dwellings. The standard otherwise for multifamily is 45% green area.

Chairman Masters opened the public hearing. Hearing no one, she closed the public hearing.

Chairman Masters asked if there would be any front doors to the residences.

Mr. Youmans stated that the intent is that the residential doors would be oriented to the side or rear of the property leaving the front for commercial entry.

Mr. Weber, seconded by Mr. Shore, moved that the Commission forward TA-08-13 as worded in Draft 1 dated 11/11/08 to City Council recommending approval because it promotes economic development and represents good planning by facilitating walkable mixed use neighborhoods.

Motion passed 6-0.

TA-08-14 AN ORDINANCE AMENDING ARTICLE 20 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO PROCEDURES FOR FILING AN APPEAL TO THE BOARD OF ZONING APPEALS

Mr. Diem presented the request brought forth by the Zoning Administrator in an effort to reduce the time period for appeal regarding overcrowding violations.

Earlier this year, the City of Winchester initiated a citizen survey effort with the ETC Institute. The results of the 2008 Winchester DirectionFinder Survey revealed that only 27% of the respondents were satisfied with the City's efforts to enforce against overcrowding. In addition,

48% of the respondents indicated that "enforcing overcrowding regulations" should receive the most emphasis over the next two years.

Much has already been improved within the City with regards to enforcement efforts and abilities through staff training and ordinance amendments. Procedurally, other areas of improvement are possible. The Commonwealth of Virginia has recently enacted changes to the Code of Virginia, pertaining to overcrowding enforcement. One such amendment was a decrease in the appeal period that a property owner – who is suspected of violating the occupancy limitations – is granted. This text amendment proposes reducing the appeal period from thirty (30) days to no

more than ten (10) days, as is specifically provided for within § 15.2-2286 of the Code of Virginia, et seq.

Recognizing that property owners may have to abruptly terminate lease agreements to achieve compliance, which typically require periods of time greater than ten days, § 15.2-2286 of the Code of Virginia stipulates the following:

However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

By reducing the appeal period to ten days, City staff can more expeditiously process the enforcement of suspected violations. Additionally, the decreased time period will serve as indication of the severity of this concern, the adverse impact on public health and safety, and recognizes the transient nature of overcrowding violations.

Chairman Masters opened the public hearing. Hearing no one, she closed the public hearing.

Mr. Adams stated that he is supportive of the amendment.

Mr. Weber, seconded by Mr. Adams, moved that the Commission forward TA-08-14 to City Council recommending approval as contained in Draft 1 dated 11/13/08 because it represents good planning practice and allows for a more expeditious enforcement effort for maximum occupancy violations.

Motion passed 6-0.

NEW BUSINESS

A. Administrative Authorizations:

- 1) **SP-07-50** Stutzman Body Shop 2711 Valley Ave sidewalk & retaining wall revision, and
- 2) **SP-08-13** Stutzman Revision 2705 Valley Ave sidewalk & retaining wall revision

Mr. Youmans explained that these two site plans would be reviewed together. He explained that the retaining wall on the southern portion of the frontage was installed two feet closer to the curb than called for on the plans. The Public Services Department had requested this of the contractor in the field during construction. Mr. Youmans stated that the Public Services Director does not like the two-foot grass strip between sidewalk and curb, so he asked for the revision. Mr. Youmans stated that he thought it would be preferable to install the remainder of the wall as called for on the plans so as to keep the pedestrians further from the curb.

Mr. Stutzman stated that he would prefer to have the remainder of the wall match the portion that has already been installed.

Chairman Masters stated that she is concerned that the wall was moved in the field because it is something that should have been reviewed by the Commission prior to making the change.

Mr. Willingham, seconded by Mr. Weber, moved to grant administrative authorization for the revised plan to allow for the remainder of the wall to be installed consistent with what has already been built in the southern portion.

Motion passed 4-2, with Chairman Masters and Mr. Talley voting in the negative.

B. Motion to initiate TA-08-15 AN ORDINANCE AMENDING AND RE-ENACTING SECTION 5.1-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO MUSEUMS AND ART GALLERIES IN THE LIMITED HIGH DENSITY RESIDENTIAL, HR-1 DISTRICT

Mr. Youmans explained that this is the amendment the Commission directed staff to draft following the work session and the request of Celebrating Patsy Cline for the Commission to consider publicly sponsoring a text amendment.

Mr. Weber, seconded by Mr. Adams, moved that the Commission initiate TA-08-15.

Motion passed 6-0.

C. Motion to approve a resolution honoring John A. Willingham

Mr. Adams, seconded by Commissioner Weber, moved to approve the resolution.

Motion passed 5-0-1, with Mr. Willingham abstaining.

D. Motion to approve a resolution honoring Carolyn T. Griffin.

Mr. Adams, seconded by Commissioner Weber, moved to approve the resolution.

Motion passed 6-0.

ADJOURN

With no further business to discuss, the meeting was adjourned at 5:06 pm.

Susan Masters, Chairman